

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,

Plaintiffs,

v.

United States of America,

Plaintiff-Intervenor,

v.

Anita Lohr, et al.,

Defendants,

and

Sidney L. Sutton, et al.,

Defendants-Intervenors,

CV 74-90 TUC DCB
(Lead Case)

Maria Mendoza, et al.,

Plaintiffs,

United States of America,

Plaintiff-Intervenor,

v.

Tucson Unified School District No. One, et al.,

Defendants.

CV 74-204 TUC DCB
(Consolidated Case)

REPORT ON PROPOSALS FOR GRADE RECONFIGURATION OF TUSD SCHOOLS

Introduction

The District proposes to alter the grade configuration at five of the District's schools:

Collier Elementary School from K-5 to K-6

Fruchtlender Elementary School from K-5 to K-6

Borman Elementary School to K-8

Drachman Elementary School to K-8

Sabino High School from 9-12 to 7-12. This last proposal misrepresents the actual plan, as will be described below.

The Department of Justice has no objection to any of these proposals. The Mendoza plaintiffs do not object to the Borman and Drachman plans. The Fisher plaintiffs object to all of the proposals except the Drachman proposal.

Pursuant to the USP's provisions for Notice and Request for Approval (NARA) of all proposals that would affect student enrollment, the Special Master hereby submits his recommendations with respect to these five proposals.

Analytical Strategy

The District revised its initial Desegregation Impact Analysis (DIA) in large part because of a survey it conducted that the District says shows that very large numbers of parents from the west side of the District would be interested in attending Sabino High School (SHS) or Magee Middle School (MMS) if express busing were provided from a central location. While the number of respondents answering yes to the questions posed was substantial, the questions themselves are suspect, and the Special Master has not used the District's analyses that factors in the results of the survey. Instead, the Special Master has relied on the initial DIA dated September 25, 2015. In the survey, Magee Middle School is characterized as a high achieving school, which it is not (its most recent state grade is C). The survey asked parents if they would

1 be interested in sending their students to Sabino High School when the question at hand is
2 whether they would be interested in attending Sabino Middle School on the SHS campus.
3 Students attending racially concentrated schools may now use incentive transportation to attend
4 SHS but very few do. District-wide, less than two percent of students use incentive
5 transportation. The District might well argue that this number would change if buses were
6 express but even the express buses would involve a two-step process requiring parents to bring
7 their students to particular locations from which the express buses would embark. There is no
8 report that the District has experimented with express buses which one might imagine it would
9 have if it were committed to integration and thought that express buses would make a difference.
10

11 **Analysis and Recommendations**

12 Drachman

13 The Court should approve.
14

15 Borman

16 The Court should approve. The school is located on a military base and the change in
17 grade structure is unlikely to affect the integration status of the school itself or the schools
18 neighboring the base that students might attend.
19

20 Collier and Fruchtlender

21 The Special Master recommends that the Court approve these proposed changes.

22 Both schools are predominantly Anglo, 64% and 65% respectively. A majority of the
23 students in both schools leave TUSD once they finish the fifth grade. The proposals to add a
24 sixth grade to each school is aimed primarily at retaining students otherwise lost to the system.
25 This seems likely and would not, therefore, alter the racial makeup of the schools. However, the
26 Fisher and Mendoza plaintiffs argue that this will significantly affect the racial composition at
27 Magee, the middle school to which each of these elementary schools feed. The District estimates
28

1 that 44 students from these two schools now transition from fifth grade to sixth grade at Magee,
2 but only nine of these come from Fruchthendler. There is some danger that this would negatively
3 affect the overall enrollment in the sixth grade at Magee even if the effect on the racial
4 composition of the school as a whole would not be significantly affected. If the District commits
5 to maintaining the staffing in the sixth grade, this could be a source of school improvement.
6

7 Sabino Middle/High School

8 The Court should not approve this proposal at this time. As proposed, Sabino middle
9 school is likely to be an Anglo racially concentrated school. Moreover, it is likely to have a
10 negative effect on both the long-term integration of Magee Middle School and the overall
11 academic performance of students in that school.
12

13 The District characterizes its proposal with respect to Sabino as a 7-12 high school
14 proposal. Such a structure is highly unusual. But more relevant here, the District has gone to
15 great pains to assure the plaintiffs and the Special Master that students in grades seven and eight
16 at Sabino would not interact with high school students in courses, libraries, hallways,
17 extracurricular activities or cafeterias. For all practical purposes, they would be in a separate
18 school on the same campus and, therefore, any analysis of the racial composition of the proposed
19 school should count only the effects of the restructuring on the experience of students in middle
20 school grades.
21

22 The creation of a middle school on the Sabino High School campus would almost
23 certainly increase the number of students attending TUSD. Not only would the District retain
24 sixth, seventh and eighth grade students who now leave the District after fifth or sixth grade, it
25 would attract students from neighboring districts and charter schools. It is almost certain, as well,
26 that most of the students attracted would be Anglo and/or middle-class because of the
27 demographics of the areas from which students would be drawn and the fact that middle-class
28

1 parents have the information and resources to actively pursue higher quality educational
2 opportunities for their children.

3 With respect to the argument here that middle-class parents are more likely to make a
4 decision to attend Sabino middle school than others, the District has argued in the past that there
5 are substantial numbers of Anglo students on free and reduced meals. But that argument is
6 irrelevant. The proportion of all students attending Fruchthendler, for example, who are on free
7 and reduced meals is well under 10 percent.

8
9 The District's September DIA is based on data about current choices parents make
10 without taking into account that the choices they would have if there was a Sabino middle school
11 would be substantially different. It seems reasonable to conclude that the racial composition of
12 Sabino middle school would look very much like the racial composition of Collier and
13 Fruchtlender elementary schools—about 64 percent Anglo—even if Magee did not lose any
14 students. But of course Magee would lose students and the students would likely come from the
15 geographic area to the north of Magee and from neighboring suburban schools and charter
16 schools. While there are no data on the racial composition of these potential new recruits to
17 TUSD schools, it seems a reasonable assumption that they would be predominantly Anglo.
18 Nothing in the Districts DIA suggests otherwise.

19
20 As Anglo and middle-class students moved from Magee to Sabino, the movement from an
21 integrated learning environment would accelerate (the Anglo population—now 46 percent—is
22 declining each year). The loss of the students not only affects the future integration prospects but
23 those leaving Magee are likely to be among the students higher achievers. The loss of the
24 students will affect perceptions of the school which cannot be helped by the fact that the school
25 houses one of three sites for the District's most troubled and troubling students who attend Magee
26 rather than being suspended from school. (The District says that it has no reason to believe that
27
28

1 the presence of students from other schools who have severe behavior problems has any effect on
2 parental choice but provides only the testimony of the principal that this is so).

3 The District argues that the loss of Anglo students at Magee would likely make it a more
4 integrated school because it would increase the proportion of Latino students. This argument
5 derives from the definition of integration in the USP that a school must have 15 percent more or
6 less of its average district-wide population for that school level to be integrated (this was opposed
7 by the three experts involved in the development of the USP). A basic goal of integration is to
8 maximize the opportunity of positive intergroup contact and many experts would say that the
9 racial distribution of students at Magee at the present time is a good environment in which to
10 achieve that goal.

11
12 When the District proposed the Sabino middle school plan, the Special Master requested
13 that there be an analysis of the costs of implementing the plan. The District's proposals identify
14 costs of busing and construction. However, the major cost of running a school is staffing. While
15 the state would provide some funding for students added to the District, this funding is unlikely to
16 cover costs of staffing much less maintenance, equipment, etc.

17
18 The Court should again deny this proposal but allow the District to resubmit a revised plan
19 as soon as possible if:

20 1. It can develop a plan for ensuring some measure of integration at Sabino middle
21 school. The District could request from the Court permission to regulate enrollment
22 linking Anglo enrollment to the enrollment of other students (*i.e.*, "controlled choice")
23 with Anglo enrollment not to exceed 50 percent. The District should also provide a
24 detailed estimate of the cost of the implementation over time.

25
26 2. The District developed an enhancement plan for Magee that could include unique
27 programs. A careful study of whether the location of the alternative suspension program
28

A revised plan with controlled choice could minimize but not eliminate the potential negative effect on Magee, especially if preference were given to students from racially concentrated schools and African American students. On the upside, if a Sabino middle school provided an opportunity for a significant number of African American and Latino students to attend an excellent, reasonably well integrated school, this would be a plus for the District and its students. This could also lead to such options being increased for students who attend Sabino High School in the future.

Dated: January 6, 2016

-7-

CERTIFICATE OF SERVICE

I hereby certify that on, January 6, 2016, I electronically submitted the foregoing **REPORT ON PROPOSALS FOR GRADE RECONFIGURATION OF TUSD SCHOOLS** for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

J. William Brammer, Jr.
wbrammer@rllaz.com

Oscar S. Lizardi
olizardi@rllaz.com

Michael J. Rusing
mrusing@rllaz.com

Patricia V. Waterkotte
pvictory@rllaz.com

Rubin Salter, Jr.
rsjr@aol.com

Kristian H. Salter
kristian.salter@azbar.org

Zoe Savitsky
Zoe.savitsky@usdoj.gov

Anurima Bhargava
Anurima.bhargava@usdoj.gov

Lois D. Thompson
lthompson@proskauer.com

Andrew H. Marks for
Dr. Willis D. Hawley,
Special Master